SUPREME COURT OF THE UNITED STATES

CLYDE TIMOTHY BUNKLEY *v.* FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 02–8636. Decided May 27, 2003

CHIEF JUSTICE REHNQUIST, with whom JUSTICE KENNEDY and JUSTICE THOMAS join, dissenting.

The Court here makes new law, and does so without briefing or argument. In *Fiore* v. *White*, 528 U. S. 23, 29 (1999), we granted certiorari to answer whether due process requires a state court to apply a judicially announced change in state criminal law retroactively. We realized after granting certiorari, however, that we could not answer that question until we knew whether there had been a change in the law at all. We therefore certified a question to the Pennsylvania Supreme Court asking whether its decision in *Commonwealth* v. *Scarpone*, 535 Pa. 273, 279, 634 A. 2d 1109, 1112 (1993), was a change in the law from the time of the defendant's conviction. When the Pennsylvania Supreme Court answered that there had been no change, we acknowledged that there was no question of retroactivity left for us to answer. *Fiore* v. *White*, 531 U. S. 225, 226 (2001) *(per curiam)*.

In the present case, the Court concedes that the Florida Supreme Court acknowledged our opinion in *Fiore*. The Florida Supreme Court concluded that its decision in *L. B.* v. *State*, 700 So. 2d 370 (1997) *(per curiam)*, decided after petitioner's conviction became final, marked a change in Florida law. 833 So. 2d 739, 744, n. 12 (2002).[1] The state

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[1] Petitioner presents strong arguments in favor of his view that the bright-line rule set out in *L. B.* existed as a matter of Florida law at the time of his conviction. Pet. for Cert. 6. But the Florida Supreme Court

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court therefore considered whether the change should be applied retroactively, and concluded that it should not be.

The Court recognizes, as it must, that the Florida Supreme Court concluded that *L. B.* was a change in the law from the time of petitioner's conviction. *Ante*, at 6 ("It is true that the Florida Supreme Court held . . . [that] the *L. B.* decision was a change in the law"). Yet the Court criticizes the Florida Supreme Court for thinking that conclusion "sufficient to dispose of the *Fiore* question." *Ibid.* The Court acknowledges that "[o]rdinarily, the Florida Supreme Court's holding that *L. B.* constitutes a change in—rather than a clarification of—the law would be sufficient to dispose of the *Fiore* question," but then holds that, because the Florida Supreme Court "characterized *L. B.* as part of the 'century-long evolutionary process,'" *Fiore* requires that court to answer an additional question: whether petitioner's knife fit within the "'common pocketknife'" exception at the time of his conviction. *Ante*, at 7.

Fiore requires no such thing. *Fiore* asked whether a change had occurred and, upon finding that none had, ended the inquiry. The Court here goes much further. It acknowledges that *L. B.* neither clarified the law that was in existence at the time of petitioner's conviction nor changed the law with retroactive effect. Yet it nonetheless insists that the Florida Supreme Court reevaluate the sufficiency of the evidence in this case. See *ante*, at 5, 7 (holding that Florida Supreme Court must answer whether "Bunkley's pocketknife . . . fit within [Fla. Stat.] §790.001(13)'s 'common pocketknife' exception at the time his conviction became final"). The Court announces this conclusion as a matter of "*Fiore*" without explaining why due process requires it. The Court's holding is a new one,

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concluded otherwise, and we may not revisit that question.

and its criticism of the state court for failing to anticipate this holding is unjustified.[2] The Florida Supreme Court, moreover, has essentially answered the question on which the Court now remands.[3]

The Court's decision to expand *Fiore* is not only new, it also unjustifiably interferes with States' interest in finality. The Florida courts have already considered several times the question this Court now asks them to answer. On direct appeal, petitioner specifically argued that a knife with a blade of less than four inches was a "common pocketknife," and he cited the 1951 opinion letter issued by the Florida Attorney General on this issue. Brief for Appellant in No. 88–1376 (Fla. Dist. Ct. App.), pp. 5–6. Petitioner also filed two motions for state postconviction relief challenging the sufficiency of the evidence with respect to the jury's conclusion that he was armed with a dangerous weapon. See Motion to Set Aside or Vacate

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[2]The Court further criticizes the Florida Supreme Court for its workmanship in the decision under review. Thus, while it recognizes the Florida court's conclusion that *L. B.* did not state the law at the time of petitioner's conviction, the Court reprimands the Florida court for failing to reach its holding in a sufficiently clear manner. See, *e.g.*, *ante*, at 7 ("Without further clarification from the Florida Supreme Court . . . we cannot know whether *L. B.* correctly stated the common pocketknife exception at the time [petitioner] was convicted"). This rebuke to the state court violates the well-established rule that this Court will not "require state courts to reconsider cases to clarify the grounds of their decisions." *Michigan* v. *Long*, 463 U. S. 1032, 1040 (1983); see also *id.*, at 1041 (noting the Court's desire to "avoi[d] the unsatisfactory and intrusive practice of requiring state courts to clarify their decisions to the satisfaction of this Court").

[3]The state court explained that "[a]lthough some courts" prior to *L. B.* "may have interpreted 'common pocketknife' contrary to the holding in *L. B.*, each court nevertheless sought to comply with legislative intent and to rule in harmony with the law as it was interpreted at that point in time." 833 So. 2d 739, 745 (Fla. 2002). Thus, the court explained, "none of the convictions imposed pursuant to section 790.001(13) violated the Due Process Clause." *Ibid.*

Judgment and Sentence in No. 86–1070–CF–A–N1 (Fla. Cir. Ct.), p. 4; Petition to Invoke "All Writs" Jurisdiction in No. 85–778 (Fla. Sup. Ct.), p. 4.[4]

Florida has established a 2-year period of limitations for filing motions for postconviction relief. Florida Rule of Criminal Procedure 3.850 "provides an exception to the two-year time limitation for filing postconviction motions where 'a fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively.' " 768 So. 2d 510, 511 (Fla. App. 2000) *(per curiam)* (quoting Fla. Rule Crim. Proc. 3.850(b)(2) (2000)). The Court's decision here overrides Florida's Rule, authorizing claims for postconviction relief where there has been a change in the law that has specifically been held *not* to apply retroactively.

The Court's holding expanding *Fiore* is striking, and the Court's decision to adopt it summarily is even more so. I would deny the petition for writ of certiorari.

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[4]Petitioner also unsuccessfully raised this claim twice in Federal District Court. See Report and Recommendation in No. 91–113–CIV–T–99(B) (MD Fla.), p. 5; Memorandum of Law in Support of Petition for Writ of Habeas Corpus under U. S. C. Section 2254 in No. 96–405–Civ.–T–24C (MD Fla.), p. 5.